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THE SUN SHINES DOWN ON FLORIDA – ALLURING YET REGULATED

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The allure of Florida is undeniable. Whether it is warmer weather or new tax laws giving you the impetus to move, open businesses or have offices in the Sunshine State, it is important to understand how to navigate our highly regulated state. The State of Florida is, for all intents and purposes, a heavily regulated state, meaning that most activities are overseen by the state government. In order to practice a profession, sell real estate, sell securities, or operate certain businesses there is a high probability that licenses and/or permits from one or more state agencies would be required prior to operate. The "why?" is no longer important as this method of operation has been firmly entrenched in the state for many decades, despite efforts to reduce such regulation while maintaining the public health, safety and welfare of Floridians. The functional question though is "how can/should one navigate through these regulations?"

Prior to joining the law firm of Berger Singerman, LLP as part of its statewide and comprehensive Government Regulatory Team, I was the General Counsel for the State of Florida Office of Financial Regulation ("OFR") and the Deputy General Counsel for the Department of Business and Professional Regulation, in which capacity I served as the chief counsel for the Division of Professions. With over twenty-five years' experience in state government as a litigator, appellate counsel and hearing officer, and a Board Specialization[1] in State and Federal Government and Administrative Practice, I have seen far too many cases that could have been averted and minor matters that could have been resolved, had the party simply been aware of Florida administrative practice and procedure.

Let's begin with a very basic approach because it lays the foundation for all matters administrative. "Agency" can be loosely defined as a unit of government with a statewide function.[2] As an example of the pervasiveness of agency regulation in the lives of Floridians, one can look at the OFR, where the agency regulates banks, credit unions, motor vehicle installment dealers, mortgage brokers, securities, investment advisers, check cashers and even virtual currency and money transmitters. Thus consumer complaints, questions and issues with these entities would be directed to this agency. Conversely, regulated entities would be investigated by this agency which could issue disciplinary action in the form of license suspensions, revocations, fines, fees, etc., against them. This pattern is prevalent throughout Florida. It is no coincidence then that while the substance of cases may range from statewide environmental and land use law to real estate licensing to public utilities to veterinarian disciplinary issues, a legal practitioner in these areas should also have a thorough understanding of "administrative law, practice and procedure," which is separate and distinct from the more popular criminal and civil practice and procedure.

One example that demonstrates the power of agencies affecting consumers and businesses is seen in the Department of Financial Services, Division of Workers' Compensation's "stop-work order process." Essentially the Department protects the public health, safety and welfare by ensuring that employers maintain the statutorily mandated level of worker's compensation coverage. Failure to do so often results in the immediate issuance of a stop-work order against the business and a request for records to assist in the calculation of a penalty. It is an arduous process for a business and care must be taken when dealing with the agency, because of the many administrative and regulatory statutes rules and procedures that must be navigated.

In general, most agency matters and disciplinary action must be processed typically though the administrative process as articulated in Ch. 120, Florida Statutes, and its attendant rules. While many states have an administrative law program that is often very similar to the Federal Administrative practice and procedure, Florida model is very different and these differences are important because expertise in one does not necessarily translate into expertise in the other. It is thus advisable that one seek the advice of counsel who is a specialist with experience and expertise in administrative law in all matters related to government and state regulatory matters.

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[1] Only 7% of ALL lawyers in the State of Florida are Board Certified.

[2] “Agency” is defined in Section 120.52(1), Florida Statutes, as follows:

(1)?“Agency” means the following officers or governmental entities if acting pursuant to powers other than those derived from the constitution:

(a)?The Governor; each state officer and state department, and each departmental unit described in s. 20.04; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only if a majority of its governing board is comprised of nonelected persons; educational units; and each entity described in chapters 163, 373, 380, and 582 and s. 186.504.

(b)?Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.

(c)?Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to this chapter by general or special law or existing judicial decisions.

For more information on this topic, please contact the author, Colin Roopnarine, on the firm’s Government and Regulatory team.

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